

# AMERICAN LEGISLATIVE EXCHANGE COUNCIL

# ALEC

## MEMORANDUM

**To:** Civil Justice Task Force Members  
**From:** Amy Kjose, Civil Justice Task Force Director  
**Date:** June 30, 2011  
**Re:** 35 DAY MAILING – Annual Meeting: Civil Justice Task Force

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The American Legislative Exchange Council will host its Annual Meeting **August 3-6** at the **Marriot New Orleans** in **New Orleans, Louisiana**. **You have until July 11 to get a room at the conference rate.** If you have not registered for the conference, you may do so at [www.alec.org](http://www.alec.org).

### About This 35-Day Mailing

This is an electronic-only 35-Day Mailing. In addition to receiving the 35-Day Mailing via e-mail, you may also access it on the Civil Justice Task Force's web page at [www.alec.org/civiljustice](http://www.alec.org/civiljustice). Keep in mind that you will need your ALEC username and password to access the 35-Day Mailing online. If you don't have an ALEC log-in, or if you'd like to change your username and password, contact Briana Mulder at 202-742-8507 or by email at [bmulder@alec.org](mailto:bmulder@alec.org). Conversely, if you choose to receive 35-Day Mailings "snail-mailed" to you, please let me know. We will assume that you prefer the 35-Day Mailing e-mailed to you unless you indicate otherwise.

### Civil Justice Task Force Members Should Attend:

- Civil Justice Task Force Meeting, **2:30-5:30pm, Friday, August 5**

### Please find the following materials enclosed:

- Annual Meeting Tentative Agenda, Registration Materials, and Reimbursement Policy
- Working Agenda for the Civil Justice Task Force Meeting
- ALEC Mission Statement & Task Force Operating Procedures
- Submitted Legislation:
  - *The Phantom Damages Elimination Act* and summary
  - *The Promoting Merit in "Merit Selection" Act* and summary
  - *The Employer Good Faith and Safe Harbor Act* and summary
- Civil Justice Task Force Roster

**Travel and Accommodations:** The conference hotel for the Annual Meeting is the **New Orleans Marriot** located at 555 Canal Street, New Orleans, LA.

I look forward to seeing you in New Orleans! If you have any questions or comments regarding the meeting, please contact me at (202) 742-8510 or by e-mail at [akjose@alec.org](mailto:akjose@alec.org).

# ALEC 2011 Annual Meeting Agenda\*

*All meetings will be held in New Orleans Marriott unless otherwise*

<b>Monday, August 1</b>	
Board of Directors Reception, <i>by invitation only</i>	6:00 p.m. - 7:00 p.m.
Board of Directors Dinner, <i>by invitation only</i>	7:00 p.m. - 9:00 p.m.
<b>Tuesday, August 2</b>	
Registration Open	12:00 p.m. - 5:00 p.m.
Joint Board of Directors Meeting	9:00 a.m. - 5:30 p.m.
State Chairs Training	3:00 p.m. - 5:00 p.m.
Leadership Reception, <i>by invitation only</i>	6:00 p.m. - 7:00 p.m.
Leadership Dinner, <i>by invitation only</i>	7:00 p.m. - 9:00 p.m.
Hospitality Suite	9:00 p.m. - 11:00 p.m.
<b>Wednesday, August 3</b>	
Registration Open	7:30 a.m. - 5:00 p.m.
Task Force Subcommittee Meetings	7:30 a.m. - 11:30 a.m.
State Chairs Meeting	9:00 a.m. - 11:15 a.m.
ALEC Exhibition Hall Open	9:30 a.m. - 5:00 p.m.
<b>Opening Luncheon</b>	<b>11:30 a.m. - 1:30 p.m.</b>
Workshop I	1:45 p.m. - 3:00 p.m.
Workshop II	1:45 p.m. - 3:00 p.m.
Task Force Chairs Meeting, <i>by invitation only</i>	3:15 p.m. - 4:15 p.m.
Workshop III	3:15 p.m. - 4:30 p.m.
Workshop IV	3:15 p.m. - 4:30 p.m.
Chairman's Reception, <i>by invitation only</i>	5:00 p.m. - 6:00 p.m.
Louisiana Welcome Reception	6:30 p.m. - 8:30 p.m.
Hospitality Suite	9:00 p.m. - 11:00 p.m.
<b>Thursday, August 4</b>	
Registration Open	7:30 a.m. - 5:00 p.m.
ALEC Exhibition Hall Open	9:30 a.m. - 5:00 p.m.
<b>Plenary Breakfast</b>	<b>8:00 a.m. - 9:15 a.m.</b>
Workshop V	9:30 a.m. - 10:45 a.m.
Workshop VI	9:30 a.m. - 10:45 a.m.
Workshop VII	11:00 a.m. - 12:15 p.m.
Workshop VIII	11:00 a.m. - 12:15 p.m.
<b>Plenary Luncheon</b>	<b>12:30 p.m. - 2:15 p.m.</b>
Task Force Meetings	2:30 p.m. - 5:30 p.m.
<ul style="list-style-type: none"> <li>• Energy, Environment and Agriculture</li> <li>• Health and Human Services</li> <li>• International Relations</li> <li>• Public Safety and Elections</li> <li>• Tax and Fiscal Policy</li> </ul>	
Health and Human Services Task Force Reception, <i>by invitation only</i>	5:30 p.m. - 6:30 p.m.
International Relations Reception, <i>by invitation only</i>	5:30 p.m. - 6:30 p.m.
Reception	6:30 p.m. - 8:30 p.m.
Hospitality Suite	9:00 p.m. - 11:00 p.m.
<b>Friday, August 5</b>	

Friday, August 5	
Registration Open	7:30 a.m. - 12:30 p.m.
ALEC Exhibition Hall Open	9:30 a.m. - 12:00 p.m.
<b>Plenary Breakfast</b>	<b>8:00 a.m. - 9:15 a.m.</b>
Workshop IX	9:30 a.m. - 10:45 a.m.
Workshop X	9:30 a.m. - 10:45 a.m.
Workshop XI	11:00 a.m. - 12:15 p.m.
Workshop XII	11:00 a.m. - 12:15 p.m.
<b>Plenary Luncheon</b>	<b>12:30 p.m. - 2:15 p.m.</b>
Task Force Meetings	2:30 p.m. - 5:30 p.m.
<ul style="list-style-type: none"> <li>• Commerce, Insurance and Economic Development</li> <li>• Civil Justice</li> <li>• Education</li> <li>• Telecommunications and Information Technology</li> </ul>	
Telecommunications and Information Technology Task Force Reception	5:30 p.m. - 6:30 p.m.
Incoming Chairman's Reception, <i>by invitation only</i>	5:30 p.m. - 6:30 p.m.
State Night <i>Contact your state chair</i>	6:30 p.m.
Saturday, August 6	
Prayer Service**	9:00 a.m. - 10:30 a.m.
Experience New Orleans Activities	TBD
Shooting outing	

*\*Agenda subject to change*

*\*\* Unaffiliated event*

# AMERICAN LEGISLATIVE EXCHANGE COUNCIL

## Civil Justice Task Force Meeting

Annual Meeting | New Orleans Marriott | New Orleans, LA  
August 5, 2011 | 2:30 p.m.-5:30 p.m.

**2:30 p.m. Welcome and Introductions**  
*Senator William J. Seitz, III (OH), Civil Justice Task Force Co-Chair*  
*Victor Schwartz, Shook, Hardy & Bacon; Civil Justice Task Force Co-Chair*

**2:45 p.m. Task Force Update**  
*Amy Kjose, ALEC Civil Justice Task Force Director*

**2:50 p.m. Civil Justice State Legislative Reform Update**  
*Matt Fullenbaum, American Tort Reform Association (ATRA)*

**3:00 p.m. PRESENTATION: Update and Ideas from the Lone Star State**  
*Cary Roberts, Casteel and Roberts*

Mr. Roberts will discuss tort reform passed by Texas this year and will highlight another innovative legal reform Texas considered this time around—something called a voluntary compensation plan.

**3:10 p.m. PRESENTATION: Victories and Insights from Florida**  
*William Large, Florida Justice Reform Institute*

Mr. Large will share improvements made in the Florida civil justice system this year and will provide insights into why certain reforms may be successful in the legislative process.

**3:20 p.m. DISCUSSION AND VOTE: The Phantom Damages Elimination Act**  
*Cary Silverman, Shook Hardy & Bacon, LLP*

*The Phantom Damages Elimination Act* would allot damages to plaintiffs based on the actual medical expenses paid or expected to be paid rather than on the sticker price. After discussion at the spring meeting followed by a couple of tweaks, the Task Force will discuss and vote on this legislation at the Annual Meeting.

**3:40 p.m. PRESENTATION: Lawsuit Lending Around the Country**  
*Oriana Senatore, US Chamber Institute for Legal Reform*

Last summer, Task Force members heard from well-known class action attorney John Beisner on the development of lawsuit lending firms and practices. Ms. Senatore will bring the issue back up for discussion and highlight legislative activity since that presentation.

**3:55 p.m. DISCUSSION AND VOTE: The Promoting Merit in “Merit Selection” Act**  
*Page Faulk, US Chamber Institute for Legal Reform*

Ms. Faulk will present legislation providing best practices for states with judicial merit selection systems. This legislation will not advocate for one form of judicial selection over another. After discussion, the Task Force will consider the legislation.

**4:25pm ROUNDTABLE DISCUSSION: Legislative Victories and Prospects for 2012**  
*Moderated by Senator William J. Seitz, III (OH), Civil Justice Task Force Co-Chair*

From Tennessee to North Carolina, tort reform has been on the agenda of many states as a way to instill business confidence in the economy. Chime in to tout your success or share your plans for 2012.

**4:45 p.m. PRESENTATION: Exploring Workers’ Compensation**  
*Trey Gillespie, Property Casualty Insurers of America*

Mr. Gillespie will provide a brief look into complex state workers’ compensation laws with the goal of getting members to consider how ALEC can be most constructive in this policy area.

**5:00 p.m. DISCUSSION: The Employer Good Faith and Safe Harbor Act**  
*Rep. Marvin Kleebe, Kansas*

Rep. Kleebe will share his model draft, the *Employer Good Faith and Safe Harbor Act*, which creates a voluntary safe harbor program for employers that establish and follow prescribed procedures for handling employment practices. The “safe harbor program” would provide employers in compliance with some relief from liability in employment dispute litigation. Members are encouraged to offer any suggestions for consideration in fine-tuning this draft.

**5:20 p.m. PRESENTATION: The Supreme Court and Civil Justice: 2011 Decisions that are in the Task Force's Breadbasket**  
*Victor Schwartz, Shook, Hardy & Bacon; Civil Justice Task Force Co-Chair*

Mr. Schwartz will provide insight into the many relevant decisions of the U.S. Supreme Court and discuss their impact on members of ALEC’s Civil Justice Task Force and their constituencies.

**5:30 p.m. Adjournment**

## **The Promoting Merit in “Merit Selection” Act Model Legislation for State Appellate Judicial Appointments**

### ***Model Legislation***

#### **Section 1. {Selection of Members, Size, Composition and Administration of the Appellate Judicial Commission}**

(A) The legislature hereby establishes a Commission to nominate appellate judicial candidates for appointment by the governor.

(B) The Commission shall be comprised of 15 members, two-thirds of them non-lawyers. The chief justice of the state supreme court shall also be a member, and shall serve as chair of the Commission. The chief justice shall have a vote only to break a tie. Members other than the chief justice shall serve staggered four year terms.

(C) The lawyer members shall be appointed by the governor with the advice and consent of the senate.

(1) The lawyer members shall be nominated by the executive board of the state bar and presented to the governor for appointment. If a nominee fails of appointment, the executive board of the state bar shall make another nomination. All nominations shall be made public. (2) No more than half plus one of the lawyer members shall be from the same political party.

(D) The non-lawyer members shall be appointed by the governor with the advice and consent of the senate.

(1) The governor shall convene a sizable non-attorney committee (*e.g.*, nine-member) to accept and solicit candidates for non-lawyer appointments to the Commission, review their qualifications, and advance the names of all applicants with the committee's recommendations to the governor for appointment. These recommendations shall be made public. The committee and the governor shall seek to effect geographic and demographic diversity in the membership of the Commission.

(2) No more than half of the non-lawyer members shall be from the same political party.

(D) Vacancies and appointments to serve on the Commission shall be widely publicized.

(E) All resources necessary to carrying out the Commission's official duties shall be provided, including: staff, equipment and materials, and orientation and continuing education of members.

#### **Section 2. {Code of Conduct for Commissioners}**

(A) The Commission shall be governed by written ethical and procedural rules approved by the senate and signed by the governor.

(B) Each commissioner shall be required to take an oath affirming his or her commitment to abide by the written ethical and procedural rules governing the Commission.

(C) Each commissioner shall disclose to the Commission all material current or past personal and business relationships with an applicant about whom they propose to deliberate or on whom they intend to vote. Commissioners shall refrain from participating in any deliberations or votes concerning any applicant who is their current business or law partner and any applicant whom a commissioner believes he or she is incapable of considering impartially.

(D) The Commission shall only act upon the existence of a quorum of more than half of the lawyer members and more than half of the non-lawyer members.

(E) Having transmitted to the governor the names of applicants the Commission is nominating, commissioners shall refrain from influencing or attempting to influence, either directly or indirectly, the decision of the governor.

### **Section 3. {Education of Commissioners}**

(A) Each new commissioner shall participate in a formal orientation with guidelines that are approved by the state senate and signed by the governor.

(B) Every two years, the commissioners shall participate in a continuing education program in which the Commission's mission, code of conduct, and policies are thoroughly reviewed.

### **Section 4. {Qualifications of Candidates for Appellate Judgeships}**

(A) An appellate judicial candidate's merit shall be the primary criterion for consideration. The Commission shall consider a candidate's experience, integrity, professional competence, judicial temperament and overall service to the law. The Commission shall consider geographic and demographic diversity desirable.

(B) Each appellate judicial candidate must conform to the state's residency and bar membership requirements.

(C) The Commission shall publicize the criteria for judicial selection.

(D) The Commission shall nominate no fewer than three candidates to the governor for each judicial vacancy. If only three candidates are nominated, no more than two may be of the same political party. If more than three candidates are nominated, no more than sixty percent may be of the same political party.

(E) If requested to do so by the governor, the Commission shall nominate a second set of no fewer than three candidates for a judicial vacancy.

## **Section 5. {Transparency and Public Participation}**

(A) All applications for an appellate judicial vacancy shall be posted on the respective court's website.

(B) Whenever an appellate judicial vacancy arises, the Commission shall hold no fewer than two public meetings to consider applicants for such vacancy. The Commission shall invite public comment about applicants at the beginning of each hearing.

(C) All information provided to the Commission by applicants or third parties shall be made public as appropriate.

(D) All hearings by the Commission shall be open to the public; however, the Commission may move from a public session to a private executive session to promote open and frank discussion provided that two-thirds of the participating commissioners vote in favor of such action.

## **Section 6. {Presentation and Selection of Candidates}**

(A) The Commission shall submit its nominations to the governor no later than 60 days after the occurrence of an appellate judicial vacancy.

(B) The governor shall with the advice and consent of the senate appoint one of the nominees of the Commission. If the senate fails to consent to the appointment of a nominee the governor proposes, the governor may propose another nominee for appointment. If the governor fails to obtain within sixty days of the Commission's last nomination the consent of the senate to the appointment of any of the nominees whom the governor has proposed, the governor shall again ask the Commission to nominate a set of no fewer than three candidates for the vacancy and the chief justice shall appoint a judge of the next highest of the state's courts to serve in the vacancy until the senate shall consent to a nominee of the governor.

## **The Promoting “Merit” in Merit Selection Act Model Legislation for State Appellate Judicial Appointments Background and Summary**

Selecting judges in a fair and open manner is one of the most important means of ensuring the integrity of state court judicial systems. Merit Selection is a process whereby an independent commission recommends judicial candidates to an appointing authority, usually the governor. In theory, judges are chosen based on qualifications, not political influence. Yet some states that select their judges through merit selection have faced accusations that the process is an exclusive, secretive and political one dominated by the trial bar. The model legislation restores the “merit” in merit selection and promotes diversity, transparency and public participation in the judicial nomination and selection process, ensuring an independent, impartial and competent judiciary.

The model legislation is designed for states that utilize an appointment process to select appellate judges and is not intended for those that elect their judges. The model legislation is not intended to advocate for one form of judicial selection over another. Rather, it aims to improve existing merit selection systems. It is drawn from the U.S. Chamber Institute for Legal Reform’s, *Promoting “Merit” in Merit Selection: A Best Practices Guide to Commission-Based Judicial Selection*, which incorporates elements of Arizona’s judicial selection process as well as sources such as the American Judicature Society, the American Bar Association and the Massachusetts code of conduct for merit selection. It includes a number of provisions to help ensure fair, effective, merit-based judicial selection and covers six broad themes: 1) selection of members, size, composition and administration of state judicial nominating commissions; 2) a code of conduct; 3) education for commissioners; 4) qualifications of judicial candidates; 5) transparency and public participation in the selection process; and 6) the presentation and selection of candidates.

Some of the key features in the model legislation include:

- An independent, bipartisan citizen Commission that evaluates potential judicial candidates and makes recommendations to the governor;
- A requirement that the Commission include broad public representation and that it be diverse in geography, political affiliation and occupation. Specifically, the Commission must be comprised of 15 members, with two-thirds of them non-lawyers and no more than half may be of the same political party;
- A requirement that the Governor appoint the commissioners with the advice and consent of the Senate;
- A requirement that no greater than 60 percent of the candidates that the Commission recommends for any given judicial vacancy can be of the same political party;
- A requirement that all meetings of the Commission regarding judicial candidates be open to the public and public comment be solicited; and

- A requirement that members base their consideration of potential judicial candidates on the candidates' experience, integrity, professional competence, judicial temperament and overall service to the law.

# **The Phantom Damages Elimination Act**

## ***Model Legislation***

**Section 1. {Title}.** This Act may be known as the Phantom Damages Elimination Act.

**Section 2. {Purpose}.** The purpose of this section is to prevent compensatory damage awards for medical expenses from including amounts that the claimant has not and will not pay for such medical care or treatment.

**Section 3. {Recovery of Medical or Health Care Expenses}.** In an action to recover damages resulting from death or injury, the damages that may be recovered by a claimant for reasonable and necessary health care services or treatment received shall include only:

(a) amounts actually paid by or on behalf of the claimant; and

(b) amounts actually necessary to satisfy unpaid charges still due and payable to the health care service provider for which the claimant or a third party on behalf of the claimant has a legal obligation to pay.

**[OPTIONAL: Section 4. {Excessive Unpaid Charges}.** Unpaid charges under Section 3(b) shall not exceed amounts customarily accepted by health care service providers for the health care services or treatment at issue in satisfaction of their bills.]

**Section 5. {Inadmissibility of Gross Amount Billed}.** The gross amounts of a claimant's medical bills are inadmissible as evidence of damages where such gross amounts are not reflective of the actual amounts paid or that remain actually owed to satisfy those bills.

**Section 6. {Rule of Construction}.** This Act is in addition to, and does not otherwise affect, any other limitation on damages.

**Section 7. {Effective Date}.** This Act is effective upon enactment and shall apply to any action filed on or after the effective date of this Act.

*Given the nuances in state law discussed above, legislators should contact the ALEC Civil Justice Task Force to evaluate the law of their states when developing legislation.*

## **The Phantom Damages Elimination Act Summary**

In personal injury litigation, a responsible defendant pays for the plaintiff's medical care. The goal is for the plaintiff to be reimbursed for all of his or her reasonable and necessary expenses. The plaintiff is made whole. In most cases, however, defendants have to pay more, often multiple times what the plaintiff or his or her insurer ever had to pay, for the plaintiffs' medical care. This overpayment is what we call "phantom damages."

Phantom damages are the difference between the amount of medical expenses billed by a doctor (the "sticker price") and the amount that the plaintiff and his or her insurer actually paid for those services. Nobody ever paid these damages. The plaintiffs' insurer, Medicare or Medicaid have negotiated rates with health care providers. For example, a hospital may charge \$1,500 for an MRI, but the actual amount paid for that MRI might be \$500. The plaintiff may have paid a \$25 co-pay and the insurer paid the remaining \$475. Yet, in litigation, the defendant is often required to pay the full \$1,500 to the plaintiff -- \$1,000 more than anyone ever paid -- simply because that amount was printed on the original bill.

For instance, in a typical slip-and-fall accident case recently upheld by a divided Colorado Supreme Court, the amount paid by the plaintiff's insurer for his medical expenses came to \$43,236, while the amount billed, before application of the negotiated rate, was \$74,242. Yet, the defendant, the nonprofit Volunteers of America, was required to pay based on medical costs that included \$31,006 in medical discounts that the company had negotiated with healthcare providers.<sup>1</sup> As this example shows, inclusion of such illusory costs can easily increase awards for damages in personal injury suits by 40% or more. Compare the Colorado outcome to a case arising out of a motorcycle accident in Florida, where phantom damages are generally not permitted. In Florida, the state's supreme court ruled that it was not permissible to award \$574,554.31 in billed medical expenses when plaintiff's medical providers accepted \$145,970.76 as full payment.<sup>2</sup>

It is enormously wasteful for defendants to "over-compensate" plaintiffs for their medical bills. These costs are invariably passed on to consumers in the price of goods and services, including health care.

### **Interaction with the Collateral Source Rule**

The "collateral source rule" generally bars juries from considering compensation that plaintiffs have received from sources other than the defendants. In many cases, the rule leads to double compensation of plaintiffs -- once from an insurer, then again through a lawsuit. The rule does not serve a compensatory purpose, but aims to not permit a defendant to benefit from a plaintiff's prudence in buying insurance. This is seen most clearly when a plaintiff has bought a life insurance policy.

Some courts consider a "negotiated rate" between an insurer and a health care provider as a benefit of the insurance policy and therefore require the jury to determine damages based on the fictional sticker price of medical care rather than the amount actually paid. Other courts find that such write-offs cannot be considered a collateral source because they are never paid and therefore

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<sup>1</sup> *Volunteers of America v. Gardenswartz*, 242 P.3d 1080 (Colo. 2010).

<sup>2</sup> *Goble v. Frohman*, 901 So.2d 830, 835 (Fla.2005).

cannot be considered to be “benefits.” This is the more sound conclusion because the core basis of the collateral source rule, the plaintiff’s prudence in purchasing insurance, is irrelevant.

The collateral source rule is a hot button issue for medical liability reform. On December 1, 2010, the President’s National Commission on Fiscal Responsibility and Reform (a/k/a the “Deficit Commission”) recommended modifying the collateral source rule to allow any outside source of income collected as a result of an injury to be considered in deciding awards.

Eliminating the collateral source rule is a broader and different reform than just determining a plaintiff’s recovery based on the amount actually paid for his or her medical expenses. The model act does not alter the collateral source rule because the ALEC approach continues to permit the claimant to recover amounts actually paid on his behalf by an insurer, if permitted by existing state law. Furthermore, the model act does not require the admission of evidence of the nature and amount of the collateral source payments made on behalf of the claimant. Nor does the ALEC model act affect states that have decided to eliminate the collateral source rule in certain cases. In sum, the ALEC model act provides an alternative, targeted approach to reducing litigation costs that serve no compensatory purpose.

## **Where Reform is Needed**

Some states, such as Texas, have already removed phantom damages from litigation awards. In 2003, Texas enacted a provision stating that “recovery of medical or health care expenses incurred is limited to the amount actually paid or incurred by or on behalf of the claimant.”<sup>3</sup>

In most states, courts have decided whether plaintiffs may recover the sticker price of medical expenses or the amount actually paid. Below is a general list of where states fall today. It is important to note that this case law is continually developing. In addition, some states may draw distinctions between private insurance, for which a plaintiff independently paid, Medicare, which is supported by taxes on employers and employees, and Medicaid, which is funded by taxpayers in general. Some states have fully eliminated the collateral source rule in medical malpractice cases, but not other personal injury actions.

<b><u>Allows Phantom Damages</u></b>	<b><u>Limits or Prohibits Phantom Damages</u></b>	<b><u>Law is Uncertain</u></b>
Arizona	Alabama	Alaska
Colorado	California	Arkansas <sup>4</sup>
Delaware	Connecticut	Michigan
District of Columbia	Florida	Minnesota
Georgia	Idaho	Montana
Hawaii	Indiana	Nevada
Illinois	Maryland	New Jersey
Iowa	Massachusetts	New Mexico

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<sup>3</sup> Tex. Civ. Prac. & Rem. Code § 41.0105.

<sup>4</sup> The Arkansas Supreme Court found that a state statute explicitly eliminating recovery for phantom damages was unconstitutional as a rule of evidence that violated separation of powers under the Arkansas Constitution. *Johnson v. Rockwell Automation, Inc.*, 308 S.W.3d 135 (Ark. 2009).

Kansas <sup>5</sup>	Missouri	North Carolina
Kentucky	New Hampshire	North Dakota
Louisiana	New York	Oklahoma
Maine	Ohio	Rhode Island
Mississippi	Pennsylvania	Tennessee
Nebraska	Texas	Utah
Oregon		Vermont
South Carolina		West Virginia
South Dakota		Wyoming
Virginia		
Washington		
Wisconsin		

## **The ALEC Model Act**

The ALEC model Phantom Damages Elimination Act helps achieve the purpose of compensatory damages: to make an injured party whole. The model act permits a plaintiff to fully recover his or her medical expenses. In most cases, by the time a case reaches a verdict, the plaintiff, or his or her insurer, has fully paid the medical bills. In such instances, Section 3(a) of the model act provides that plaintiffs may recover the amount he or she actually paid for medical expenses or that a third party paid on the plaintiff's behalf.

In relatively few cases, at the time of trial, the plaintiff has outstanding medical bills. In such situations, Section 3(b) of the model act permits the plaintiff to recover amounts necessary to satisfy the unpaid charges still due and payable to the health care service provider for which the plaintiff or a third party on behalf of the plaintiff has a legal obligation to pay. This provision would continue to permit the jury to consider the billed amounts of outstanding debts, so long as the plaintiff, or a third-party, such as an insurer, on the plaintiff's behalf, truly has a legal obligation to pay the bill.

Section 4 of the model act provides legislators with an option for explicitly limiting recovery of unpaid charges to amounts customarily accepted by health care service providers for the services or treatment at issue in satisfaction of their bills. This provision addresses three potential issues. First, billed, but unpaid, amounts may be inflated and may not reflect that healthcare provider would later reduce or write off all or a portion of the debt. Second, without this provision, a patient who has not paid his or her bills may recover the full "sticker price" of medical services, while a person who did so would recover the lower amount actually paid. Finally, this provision closes a loophole that some personal injury lawyers have exploited to avoid restrictions on phantom damages – they enter an agreement with the healthcare provider to defer collection efforts during litigation and commit to pay the medical expenses out of any recovery.<sup>6</sup> Thus,

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<sup>5</sup> Kansas courts have found that write offs are not a collateral source and are therefore admissible in Medicaid cases, but have excluded evidence of the amount actually paid in cases involving private insurance or Medicare.

<sup>6</sup> In some cases, evidence suggests that personal injury lawyers steer their clients to handpicked medical clinics that specialize in treating those who have filed lawsuits. These clinics charge inflated rates and may undertake unnecessary tests or care, such as referring the plaintiff for excessive rehabilitation sessions. Letter of Protection agreements typically provide that the plaintiff is personally responsible for

phantom damages are hidden until the case is over. Personal injury lawyers in Florida, Texas, and other states openly tout their use of letters of protection to recover non-discounted rates. By limiting recovery of unpaid charges to amounts customarily accepted by health care service providers for the health care services or treatment at issue in satisfaction of their bills, Section 4 of the model act ensures that all plaintiffs are treated equally, regardless of the timing of their payment of medical expenses, and reduces the ability of lawyers to circumvent the law.

Section 5 of the model act provides that billed amounts of medical expenses that no one actually paid or that are not actually owed are inadmissible as evidence of damages.

The ALEC model act does not alter existing state law regarding recovery of future medical expenses.

The ALEC approach is consistent with the Restatement (Second) of Torts § 911 cmt. h, which provides: “When the plaintiff seeks to recover for expenditures made or liability incurred to third persons for services rendered, normally the amount recovered is the reasonable value of the services rather than the amount paid or charged. If, however, the injured person paid less than the exchange rate, he can recover no more than the amount paid, except when the low rate was intended as a gift to him.”<sup>7</sup> The model act is also consistent with the common law of many states<sup>7</sup> and is based, in part, on legislation enacted in Texas.

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paying these bills at the conclusion of the case, regardless of its outcome. In practice, however, if the plaintiff does not recover in the lawsuit, the health care provider writes off some or all of the bill.

<sup>7</sup> See, e.g., *Hanif v. Housing Auth.*, 246 Cal.Rptr. 192, 195-96 (Cal. Ct. App. 1988) (“[A] plaintiff is entitled to recover up to, and no more than, the actual amount expended or incurred for past medical services so long as that amount is reasonable.”); *Goble v. Frohman*, 901 So.2d 830, 835 (Fla.2005) (“[R]ecover for medical expenses [is limited] to the amount of medical expenses that he actually was obligated to pay.”); *Dyet v. McKinley*, 81 P.3d 1236, 1239 (Idaho 2003) (“write-off is not technically a collateral source”); *Kastick v. U-Haul Co. of W. Mich.*, 740 N.Y.S.2d 167, 169 (N.Y. Super., App. Div. 2002) (“Although the write-off technically is not a payment from a collateral source . . . , it is not an item of damages for which plaintiff may recover because plaintiff has incurred no liability therefor.”); *Moorhead v. Crozer Chester Med. Ctr.*, 765 A.2d 786, 789-90 (Pa. 2001) (“W]here, as here, the exact amount of expenses has been established by contract and those expenses have been satisfied, there is no longer any issue as to the amount of expenses for which the plaintiff will be liable. In the latter case, the injured party should be limited to recovering the amount paid for the medical services”).

## **Employer Good Faith and Safe Harbor Act**

**Section 1.** As used in the employer good faith and safe harbor act:

- A) “Employee” means any person who is employed by an employer in consideration for direct or indirect monetary wages or profit;
- B) “Employer” means any person, partnership, corporation, association, organization or other business entity which employs four or more individual persons;
- C) “Mediation” under this act is the process by which a neutral mediator appointed by the court, or by a hearing officer, assists the parties in reaching a mutually acceptable agreement as to issues of employment. The role of the mediator is to aid the parties in identifying the issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and finding points of agreement;
- D) “Supervisor” means any individual having authority to hire, transfer, suspend, lay off, recall, promote, discharge, discipline and handle grievances of other employees, by exercising independent judgment.

### **Section. 2.**

- A) Any employer seeking to be granted safe harbor certification shall implement an employee awareness and training program in accordance with this act.
- B) A certified evaluator shall issue a certificate of safe harbor status upon the employer's satisfactory showing that the requirements for certification set forth in subsection (C) have been met.
- C) To receive certification of safe harbor status, an employer shall:
  - 1) Include an equal employment opportunity disclaimer in all advertisements for

hiring;

2)implement and maintain in written or electronic form:

- a) A company-wide equal opportunity statement;
- b) a job description for each position;
- c) selection criteria for each position, which shall include required experience, education and skills;
- d) a standardized interview process, which shall include acceptable interview questions for each position;
- e) job performance standards for each position, which shall be used in semi-annual job performance evaluations;
- f) a standardized employment agreement, which shall be signed by the employee;
- g) an employment at-will acknowledgment form, which shall be signed by the supervisor and employee;
- h) a mediation agreement signed by the employer and the employee;
- i) a process to avoid and resolve:
  - i. Wrongful or unlawful termination or discharge claims, equal pay claims, breach of employment contract claims, long term employee claims, employment settlement negotiations and other employment related claims;
  - ii. age, disability, gender, national origin, race, sex or sexual orientation discrimination;
  - iii. noncompliance with Americans with disability act and

- age discrimination in employment act;
  - iv.sex, gender, sexual or discriminatory harassment;
  - v.retaliation and retaliatory termination;
  - vi.whistle-blowing;
  - vii.failure to pay wages, including overtime wages;
  - viii.termination without good cause;
  - ix.meal and rest periods;
  - x.employee misclassification as exempt;
  - xi.unlawful termination or discharge due to serious medical condition;
  - xii.failure to pay work expenses and unlawful deductions from employee pay or salary;
  - xiii.severance negotiations; and
  - xiv.employer bad faith;
- j) an employee behavioral counseling and corrections process, which shall require a written acknowledgment form signed by the employee and supervisor;
- k) a process to handle employee complaints;
- l) a training program for:
- i. All personnel involved in the interviewing process;
  - ii. orientation and on-boarding new employees;
  - iii. all new supervisory and management staff, which shall cover all aspects of employment law; and

- iv. management on sensitivity, discrimination, workplace safety and employment law, which shall occur at least every three months;
- m) a process to establish exempt and non-exempt status; and
- n) a company downsizing plan.

### **Section 3.**

A) The department of commerce shall establish a program to certify evaluators of employer safe harbor certification. The secretary of commerce shall accept applications for evaluator certification on a form to be supplied by the secretary's office. The application for evaluator certification shall be accompanied by a fee of \$25. Upon acceptance of such application for certification and the receipt of the fee, the secretary may issue to such applicant a certified evaluator certificate. Such certification shall expire one year after its issuance. The secretary shall adopt rules and regulations to implement this program on or before January 1, 2012.

B) Certified evaluators shall review the applications of employers seeking safe harbor certification and determine whether such employers have met the requirements of subsection (c) of section 2, and amendments thereto. Upon determination that an employer has met the requirements for safe harbor certification, the evaluator shall issue to such employer a certificate of safe harbor status.

C) Such certification shall expire one year after its issuance.

D) The application for certification may be rejected and denied if the applicant does not supply all the information deemed necessary or if the applicant's establishment does not meet the requirements of subsection (c) of section 2, and amendments thereto.

E) Upon issuance of a certificate of safe harbor status to an employer, the evaluator shall send a notice of certification to the secretary of commerce. Such notice shall contain the name, address and phone number of the certified employer and the issuance and expiration dates of such certificate of safe harbor status.

F) The department of commerce shall prepare and keep a record of employers certified as having safe harbor status.

#### **Sec. 4.**

A) There is hereby established in the state treasury the employer safe harbor fund which shall be administered by the secretary of commerce. All expenditures from the employer safe harbor fund shall be for expenses of implementing the evaluator and safe harbor certification program. All expenditures from the safe harbor fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or the secretary's designee.

B) All moneys received for evaluator certification shall be deposited in the state treasury in accordance with the provisions of K.S.A. 75-4215, and amendments thereto, and shall be credited to the employer safe harbor fund.

#### **Section. 5.**

A) Upon written agreement between an employer with a valid certificate of safe harbor status and an employee, as required in subsection (c) section 2, and amendments thereto, the parties shall submit any disputes that may arise during the course of employment to mediation as provided in such agreement, prior to the filing of any civil action in district

court. In the absence of such agreement, the court or hearing officer shall order mediation of any employment dispute upon motion of either party and shall appoint a mediator.

B) A mediator appointed under subsection (A) shall:

- (1) Inform the parties of the costs of mediation;
  - (2) advise the parties that the mediator does not represent either or both of the parties;
  - (3) define and describe the process of mediation to the parties;
  - (4) disclose the nature and extent of any relationships with the parties and any personal, financial or other interests which could result in bias or a conflict of interest;
  - (5) advise each of the parties to obtain independent legal advice;
  - (6) allow only the parties to attend the mediation sessions;
  - (7) disclose to the parties' attorneys any factual documentation revealed during the mediation if at the end of the mediation process the disclosure is agreed to by the parties;
- and
- (9) inform the parties of the extent to which information obtained from and about the participants through the mediation process is not privileged and may be subject to disclosure.

(C) The mediator may, with the consent of the parties, meet with other persons.

(D) The mediator shall make a written summary of any understanding reached by the parties. A copy of the summary shall be provided to the parties and their attorneys, if any. The mediator shall advise each party in writing to obtain legal assistance in drafting any agreement or for reviewing any agreement drafted by the other party. Any understanding reached by the parties as a result of mediation shall not be binding upon the parties nor admissible in court until it is reduced to writing, signed by the parties and their attorneys,

if any, and approved by the court. If the parties are not represented by attorneys, the mediator shall provide to the court or hearing officer the written summary of any understanding signed by the parties, which, if approved by the court or hearing officer, shall be incorporated in the order of the court or hearing officer.

(E) The mediator may act as a mediator in subsequent disputes between the parties.

However, the mediator shall decline to act as attorney, counselor or psychotherapist for either party during or after the mediation or other proceedings unless the subsequent representation, counseling or treatment is clearly distinct from the mediation issues.

(F) If the parties involved in the dispute reach an agreement, the agreement may be reduced to writing and signed by the parties. The agreement shall set forth the settlement of the issues and the future responsibilities of each party. If a court referred the case, the agreement as signed and approved by the parties may be presented to the court as a stipulation and, if approved by the court, such agreement shall be enforceable as an order of the court.

(G) At any time after the second mediation session, either party may terminate mediation ordered under subsection (A). The mediator shall terminate mediation whenever the mediator believes that:

(1) continuation of the process would harm or prejudice one or more of the parties  
or

(2) the ability or willingness of any party to participate meaningfully in mediation is so lacking that a reasonable agreement is unlikely. The mediator shall report the termination of mediation to the court. The mediator shall not state the reason for termination except when the termination is due to a conflict of interest or bias on the part

of the mediator.

(H) All verbal or written information transmitted between any party to a dispute and a mediator conducting a proceeding under this section shall be confidential communications. No admission, representation or statement made in the proceeding shall be admissible as evidence or subject to discovery. A mediator conducting a proceeding under this section shall not be subject to process requiring the disclosure of any matter discussed during the proceedings unless all the parties consent to a waiver. Any party and the mediator conducting the proceeding, participating in the proceeding has a privilege in any action to refuse to disclose, and to prevent a witness from disclosing, any communication made in the course of the proceeding. The privilege may be claimed by the party or the mediator or anyone the party or the mediator authorized to claim the privilege.

(I) The confidentiality and privilege requirements of this section shall not apply to:

- 1) Information that is reasonably necessary to allow investigation of or action for ethical violations against the mediator conducting the proceeding or for the defense of the mediator or staff of an approved program conducting the proceeding in an action against the mediator or staff of an approved program if the action is filed by a party to the proceeding;
- 2) any information that the mediator conducting the proceeding is required to report under K.S.A. 2010 Supp. 38-2223, and amendments thereto;
- 3) any information that is reasonably necessary to stop the commission of an ongoing crime or fraud or to prevent the commission of a crime or fraud in the future for which there was an expressed intent to commit such crime or fraud;

4) any information that the mediator conducting the proceeding is required to report or communicate under the specific provisions of any statute or in order to comply with orders of a court; or

5) any report to the court that a party has issued a threat of physical violence against a party, a party's dependent or family member, the mediator or an officer or employee of the court with the apparent intention of carrying out such threat.

(J) The costs of any mediation ordered under subsection (A) shall be taxed to either or both parties as equity and justice require, unless the parties have reached a reasonable agreement as to payment of costs.

## **Section 6.**

(A) Notwithstanding any other provisions of law, it shall be a defense for any civil action based on an employment dispute that the employer has a valid certificate of safe harbor status. To overcome such a defense, the plaintiff has the burden of proving by clear and convincing evidence that the safe harbor certification requirements of subsection (C) of section 2, and amendments thereto, were not met.

(B) Punitive damages shall not be recoverable in any civil action against an employer with a valid certificate of safe harbor status. Actual damages may be awarded.

(C) Nothing in this act shall be deemed to grant immunity to any employer causing damages by willful or wanton misconduct or intentionally tortious conduct.

**Section 7.** This act shall apply to all civil actions that allege an employment dispute that are filed on or after the effective date of this act.

**Section 8.** If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable.

**Section 9.** If any provision of this act or the application thereof to any person or circumstance is held to be preempted by federal law, the preemption shall not affect other provisions or applications of the act which can be given effect.

**Section 10.**

(A) Section 1 through 10, and amendments thereto, shall be known and may be cited as the Employer Good Faith and Safe Harbor Act.

(B) The provisions of this act shall be liberally construed to promote the protection of employers from the excessive costs and burdens of frivolous or retaliatory lawsuits.

# The Employer Good Faith and Safe Harbor Act

Draft for Consideration by ALEC's Civil Justice Task Force

## Summary

The Employer Good Faith and Safe Harbor Act is intended to provide statutorily a safe harbor program for employers that establish and follow a prescribed template for managing the complete array of employment issues from recruitment, hiring, workers compensation, counseling, employment processes and procedures for termination. The safe harbor would provide the employer with an extra line of defense in employment disputes based on recognition that development of and adherence to employment procedures shows good faith and merits increased protection from liability.

Specifically, the safe harbor program would be developed by the Department of Labor of any state, and then private sector law firms and HR consulting firms would be certified to administer and establish the prescribed program. Voluntarily, private sector companies would engage the administering firms and sign up for the program. The administering firms would be required to annually audit their clients' adherence to the safe harbor program, and then in turn the state would audit randomly the administering firms to ensure compliance.

Furthermore, businesses that are approved for and utilize the program could use their adherence to the safe harbor program as a defense in the case of legal claims or grievances filed against them by their employees (such examples could include discrimination, wrongful termination, wrongful hiring practices, hostile workplace assertions, and so forth). All of these employment grievances often involve tremendous amounts of unproductive time and professional fees to defend, as well as potentially large settlement fees.

The Employer Safe Harbor program would be funded entirely by fees paid by the voluntarily participating companies. In turn, participants would at a minimum have a first class employment program (including employment handbooks, processes and procedures). Furthermore, they would enjoy a legal defense (when properly following the state's safe harbor employment program) that could save significant amounts of money in defense costs against claims. Importantly, this program would not inhibit victims that are wronged at a level not protected by the program from suing and being compensated. Finally, for firms that buy insurance for employment practices, the state could statutorily encourage insurance carriers to discount such policies.

Overall, the Employer Good Faith and Safe Harbor bill seeks to create business friendly environments in states so business resources can be spent on growth and job creation rather than on litigation, regulations and red tape. And as the Employer Safe Harbor program would be voluntary and financed through fees paid by participants, the legislation would not grow the size of government. Many of the discrimination and employment issues are federally based and enforced; however, states still have jurisdiction and departments handling the same sort of concerns and issues. State legislators should be able to play a part here. In addition, states adopting such a pro-

business regulatory and legal program would make them more attractive in today's competitive global economy for the location of operations and jobs.

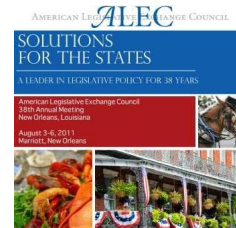
# ATTENDEE

## REGISTRATION / HOUSING FORM

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

Early registration deadline: June 7, 2011  
Standard registration deadline: July 11, 2011  
Housing cut-off date: July 11, 2011

New Orleans Marriott - New Orleans, LA



Online  
www.alec.org

Fax (credit cards only)  
202.331.1344

Phone / Questions • Mon-Fri, 9am-5:30 pm Eastern  
Registration: 202.742.8538 / Housing: 800.228.9290

### ATTENDEE INFORMATION

Prefix (required) ☐ Sen ☐ Rep ☐ Del ☐ Mr ☐ Mrs ☐ Ms ☐ Other \_\_\_\_\_  
Last Name \_\_\_\_\_ First Name \_\_\_\_\_ Middle Initial \_\_\_\_\_ Badge Nickname \_\_\_\_\_  
Title \_\_\_\_\_  
Organization (required) \_\_\_\_\_  
Address \_\_\_\_\_ Suite # \_\_\_\_\_  
City \_\_\_\_\_ State/Province \_\_\_\_\_ Country \_\_\_\_\_ ZIP/Postal code \_\_\_\_\_  
Daytime phone \_\_\_\_\_ Fax \_\_\_\_\_ Alternate phone \_\_\_\_\_  
Email (confirmation will be sent by email) \_\_\_\_\_

Spouse / Guest / Kids' Congress: Please complete the Spouse / Guest / Kids' Congress registration form.

### REGISTRATION INFORMATION

**\*\*Save \$100 on registration by booking your hotel room in ALEC's headquarter hotel\*\***

**DISCOUNTED REGISTRATION FEES** are extended only to registrants booking in ALEC's headquarter hotel. Your \$100 savings will become valid when accommodations are confirmed.

	EARLY until June 7	STANDARD until July 11	ON-SITE begin July 12	DAILY	Amount
<input type="checkbox"/> I am already registered: Order # _____					
<b>** Please note that member fees are subject to verification</b>					
<input type="checkbox"/> ALEC Legislative Member	\$475	\$575	\$675	\$295	\$ _____
<input type="checkbox"/> Legislator / Non-Member	\$575	\$675	\$725	\$395	\$ _____
<input type="checkbox"/> ALEC Private Sector Member	\$840	\$930	\$1099	\$595	\$ _____
<input type="checkbox"/> Private Sector / Non-Member	\$975	\$1065	\$1350	\$695	\$ _____
<input type="checkbox"/> ALEC Non-Profit Member (501(c)(3) status required)	\$610	\$685	\$760	\$395	\$ _____
<input type="checkbox"/> Non-Profit Non-Member (501(c)(3) status required)	\$725	\$800	\$875	\$495	\$ _____
<input type="checkbox"/> Legislative Staff / Government	\$650	\$750	\$900	\$495	\$ _____
<input type="checkbox"/> ALEC Legacy Member	\$0	\$0	\$0	\$0	\$ _____

Promo Code \_\_\_\_\_

**TOTAL REGISTRATION FEES: \$ \_\_\_\_\_**

#### METHOD OF REGISTRATION PAYMENT

**Credit Card:** Credit cards will be charged immediately. Please fax to the above number for processing.

☐ Amer Express ☐ Visa ☐ MasterCard

Card # \_\_\_\_\_

Cardholder (please print) \_\_\_\_\_

Exp Date (mm/yy) \_\_\_\_\_ Security Code \_\_\_\_\_

Signature \_\_\_\_\_

**Note:** Registration forms with enclosed payments must be received by 5pm Eastern on the following dates to be eligible for discounted registration rates: June 7, 2011, for early registration rates, or July 11, 2011, for standard registration rates. Forms and/or payments received after July 11, 2011, will be subject to the on-site registration rate. If registering after July 11, 2011, please bring completed form and payment to register on-site.

#### REGISTRATION CONFIRMATION INFORMATION

Online registrants will receive immediate email confirmation. If registering by form, confirmation will be emailed, faxed, or mailed within 72 hours of receipt of payment.

#### REGISTRATION CANCELLATION / REFUND INFORMATION

Registrations cancelled prior to 5pm Eastern July 11, 2011 are subject to a \$100 cancellation fee. Registrations are non-refundable after 5pm Eastern July 11, 2011.

### HOUSING

**RESERVATION CUTOFF FOR ALEC DISCOUNTED RATE IS 12pm Eastern July 11, 2011**

**\*\*Save \$100 on registration by booking your hotel room in ALEC's headquarter hotel\*\***

☐ I do not require a reservation at this time.

Arrival Date \_\_\_\_\_ Departure Date \_\_\_\_\_

☐ Sharing room with \_\_\_\_\_

#### Room type

<input type="checkbox"/> Single	(1 person – 1 bed)	\$ 183
<input type="checkbox"/> Double	(2 persons – 1 bed)	\$ 213
<input type="checkbox"/> Db/Db	(2 persons – 2 beds)	\$ 213
<input type="checkbox"/> Triple	(3 persons – 2 beds)	\$ 243
<input type="checkbox"/> Quad	(4 persons – 2 beds)	\$ 273

A limited number of **suites** are available upon request. Please call 800.228.9290 for additional information.

#### Special requests

☐ ADA room required:  
\_\_\_\_ Audio \_\_\_\_ Visual \_\_\_\_ Mobile  
☐ Rollaway / crib: \_\_\_\_\_  
☐ Other: \_\_\_\_\_

#### METHOD OF HOUSING PAYMENT

☐ Please use the same method of payment as above.

**Credit Card:** Credit cards will be used to guarantee the reservation

☐ Amer Express ☐ Visa ☐ MasterCard ☐ Discover

Card # \_\_\_\_\_

Cardholder (please print) \_\_\_\_\_

Exp Date (mm/yy) \_\_\_\_\_ Security Code \_\_\_\_\_

Signature \_\_\_\_\_

\* All rates DO NOT include state and local tax currently 13% plus occupancy tax \$3.00 (subject to change)

**Note:** Cutoff for reservations at the ALEC rate is July 11, 2011. After July 11, 2010, every effort will be made to accommodate new reservations, based on availability and rate.

#### HOUSING CONFIRMATION INFORMATION

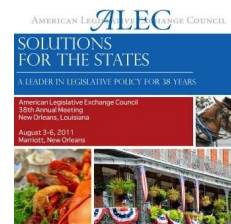
Online reservations will receive immediate email confirmation. Reservations received by form will be confirmed via email, fax, or mail within 72 hours of receipt.

#### HOUSING CANCELLATION / REFUND INFORMATION

Credit cards will be charged one night room and tax in the event of a no show or if cancellation occurs within 72 hours prior to arrival. Departures prior to the departure date confirmed by the hotel at check-in will result in a charge of \$100 plus tax. Please obtain a cancellation number when your reservation is cancelled.

# SPOUSE / GUEST KIDS' CONGRESS REGISTRATION FORM

AMERICAN LEGISLATIVE EXCHANGE COUNCIL  
**ALEC**



Early registration deadline: May 2, 2011  
Standard registration deadline: July 11, 2011

New Orleans Marriott - New Orleans, LA

Online  
www.alec.org

Fax (credit cards only)  
202.331.1344

Phone / Questions • Mon-Fri, 9am-5:30 pm Eastern  
202.742.8538

Mail • ALEC Registration & Housing  
P.O. Box 96754 • Washington, DC 20090-6754

**IMPORTANT: Please identify the ALEC attendee**

## ALEC ATTENDEE Profile Information

First Name	Last Name	REGISTRATION ORDER NUMBER
Daytime Phone		
Email (Confirmation will be sent by email)		

## SPOUSE / GUEST / KIDS' CONGRESS Registration Fees

	(#) x	EARLY until May 2	STANDARD until July 11	ON-SITE begin July 12	DAILY	Amount
A. Spouse / Guest / Child 18 yrs or older	( ) x	\$150	\$150	\$150	n/a	= \$
B. Kid's Congress (6 months to 17 yrs) <b>for ALEC Members Full Conference Rate</b>	( ) x	\$250	\$350	\$550	n/a	= \$
C. Kid's Congress (6 months to 17 yrs) <b>for Non-ALEC Members Full Conference Rate</b>	( ) x	\$350	\$450	\$650	n/a	= \$
D. Kid's Congress (6 months to 17 yrs) <b>Day rate: Wed., Thurs., or Fri.</b>	( ) x	\$150	\$150	\$250	n/a	= \$

SPOUSE / GUEST / KID'S REGISTRATION FEE(s) TOTAL \$

## Spouse / Guest / Child Names Please list the names of the spouse / guest / children below

Spouse / Guest / Child Name	Child Date of Birth	Registration Type A,B,C,D (above)	Spouse / Guest / Child Name	Child Date of Birth	Registration Type A,B,C,D (above)
1.			5.		
2.			6.		
3.			7.		
4.			8.		

## Payment Information

**Credit Card:** Credit cards will be charged immediately. Please fax to the above number for processing.

<input type="checkbox"/> American Express	Card #	
<input type="checkbox"/> Visa	Cardholder (please print)	
<input type="checkbox"/> MasterCard	Exp Date (mm/yy)	Security Code
	Signature	

**Check / money order:** Payment must be in U.S. currency drawn on a U.S. bank. Please make check payable to ALEC Registration and send to above address.

**Note:** Registration forms with enclosed payments must be received by 5pm Eastern on the following dates to be eligible for discounted registration rates: May 2, 2011, for early registration rates, or July 11, 2011, for standard registration rates. Forms and/or payments received after July 11, 2011 will be subject to the on-site registration rate. If registering after July 11, 2011 please bring completed form and payment to register on-site.

## Confirmation Information

Online registrants will receive immediate confirmation via email. If registering by written form, confirmation will be emailed (if address provided), faxed, or mailed within 72 hours of receipt of payment.

## Cancellation / Refund Information

Registrations cancelled prior to 5:00 p.m. (EST) July 11, 2011 are subject to a \$100 cancellation fee. Registrations are non-refundable after 5:00 p.m. (EST) July 11, 2011.

## **SCHOLARSHIP POLICY BY MEETING**

### ***ALEC Spring Task Force Summit:***

1. ***Spring Task Force Summit Reimbursement Form:*** ALEC Task Force Members are reimbursed by ALEC up to \$350.00 for travel expenses. Receipts must be forwarded to the ALEC Policy Coordinator and approved by the Director of Policy.
2. ALEC Task Force Members' room & tax fees for up to a two-night stay at the host hotel are covered by ALEC.
3. Registration fees are not covered; however, Task Force Members may submit registration expenses for payment from their state scholarship account upon approval of the State Chair.
4. *Official Alternate Task Force Members* (chosen by the State Chair and whose names are given to ALEC more than 35 days prior to the meeting to serve in place of a Task Force Member who cannot attend) are reimbursed in the same manner as Task Force Members.
5. ***State Scholarship Reimbursement Form:*** Any fees above the set limit, or expenses other than travel and room expenses can be submitted by Task Force Members for payment from their state scholarship account upon the approval of the State Chair. Receipts must be submitted to the State Chair, who will submit the signed form to the Director of Membership.
6. *Non-Task Force Members* can be reimbursed out of the state scholarship fund upon State Chair approval. Receipts must be submitted to the State Chair, who will submit the appropriate signed form to the Director of Membership.

### ***ALEC Annual Meeting:***

***State Scholarship Reimbursement Form:*** State scholarship funds are available for reimbursement by approval of your ALEC State Chair. Expenses are reimbursed after the conference, and may cover the cost of travel, room & tax, and registration. Receipts are to be submitted to the State Chair, who will then submit the signed form to the Director of Membership.

### ***ALEC States & Nation Policy Summit:***

1. ***States & Nation Policy Summit Reimbursement Form:*** ALEC offers two scholarships per state to cover the cost of travel, room & tax, and registration not to exceed \$1,000.00 per person for a total of \$2,000.00 per state. ALEC scholarship recipients must be named by the ALEC State Chair. Expenses are submitted to the State Chair and reimbursed after the conference. The State Chair submits the signed form to the Director of Membership.
2. ***State Scholarship Reimbursement Form:*** Any other fees or payments must come out of the state scholarship account, with the approval of the State Chair. Receipts must be submitted to the State Chair, who submits the signed form to the Director of Membership.

### ***ALEC Academies:***

***Academy Reimbursement Form:*** Attendees of ALEC Academies are reimbursed by the Task Force Committee hosting the Academy. Attendees will receive a form at the Academy, and will be reimbursed up to \$500.00 for travel, and room & tax fees for a two-night stay by ALEC. Receipts must be forwarded to the appropriate Task Force Director and approved by the Director of Policy.

## Directory - Full Name and Address

Rod Adair  
New Mexico Senator  
New Mexico Legislature  
PO Box 1796  
Roswell, NM 88202  
(505) 986-4385, voice  
(505) 986-4408, fax

Gilbert R. Baker  
Arkansas Senator  
Arkansas General Assembly  
17 Cooper Lane  
Conway, AR 72034-7935  
(501) 682-6107, voice  
(501) 682-2917, fax

Barry Bauman  
Executive Director  
Lawyers for Civil Justice  
1140 Connecticut Avenue, NW  
Suite 503  
Washington, DC 20036-4001  
(202) 429-0045, voice  
(202) 429-6982, fax

Andy Biggs  
Arizona Senator  
Arizona Legislature  
Capitol Complex - Senate  
1700 West Washington Street  
Phoenix, AZ 85007-2890  
(602) 926-4371, voice  
(602) 417-3022, fax

Randy G. Boehning  
North Dakota Representative  
North Dakota Legislature  
825 42nd Street, SW  
Room 211  
Fargo, ND 58103-1143  
(701) 328-2916, voice  
(701) 328-1997, fax

Rob Bruchman  
Kansas Representative  
Kansas Legislature  
KS

Garth R. Alston  
District Director, State Government  
Affairs  
Altria Client Services, Inc.  
33 E. Main Street  
Suite 420  
Madison, WI 53703  
608-251-0195, voice  
(608) 251-0895, fax

Jimmy C. Bales  
South Carolina Representative  
South Carolina Legislature  
Blatt Building  
1105 Pendleton Street  
Columbia, SC 29201  
(803) 734-3058, voice  
(803) 734-2925, fax

Mark Behrens  
Partner  
Shook, Hardy & Bacon, LLP  
1155 F Street, NW  
Suite 200  
Washington, DC 20004  
(202) 639-5621, voice  
(202) 783-4211, fax

Gus R. Blackwell  
Oklahoma Representative  
Oklahoma Legislature  
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## **Mission Statement**

The American Legislative Exchange Council's mission is...

To advance the Jeffersonian Principles of free markets, limited government, federalism, and individual liberty through a nonpartisan public-private partnership among America's state legislators, concerned members of the private sector, the federal government, and the general public.

To promote these principles by developing policies that ensure the powers of government are derived from, and assigned to, first the People, then the States, and finally the Federal Government.

To enlist state legislators from all parties and members of the private sector who share ALEC's mission.

To conduct a policy making program that unites members of the public and private sector in a dynamic partnership to support research, policy development, and dissemination activities.

To prepare the next generation of political leadership through educational programs that promote the principles of Jeffersonian democracy, which are necessary for a free society.



## **American Legislative Exchange Council TASK FORCE OPERATING PROCEDURES**

### ***I. MISSION OF TASK FORCES***

Assume the primary responsibility for identifying critical issues, developing ALEC policy, and sponsoring educational activities which advance the Jeffersonian principles of free markets, limited government, federalism, and individual liberty. The mission will be accomplished through a non-partisan, public and private partnership between ALEC's legislative and private sector members in the specific subject areas assigned to the Task Force by the Board of Directors.

### ***II. TASK FORCE RESPONSIBILITIES***

- A. Task Forces have the primary responsibility for identifying critical issues and developing ALEC's official policy statements and model legislation appropriate to the specific subject areas of the Task Force.
- B. Task Forces serve as forums for an exchange of ideas and sharing of experiences between ALEC's state legislator and private sector members.
- C. Task Forces are responsible for developing and sponsoring the following educational activities appropriate to the specific subject area of the Task Force:
  - publications that express policy positions, including, but not limited to State Factors and Action Alerts;
  - educational communication and correspondence campaigns;
  - issue specific briefings, press conferences and press campaigns;
  - witness testimony and the activities of policy response teams;
  - workshops at ALEC's conferences; and
  - specific focus events.
- D. The Executive Director is to ~~Task Forces are responsible for developing an annual budgets,~~ which shall include expenses associated with Task Force meetings and educational activities. A funding mechanism to finance all meetings and educational activities proposed by Task Forces must be available before they can be undertaken.

### ***III. GENERAL PROCEDURES***

- A. Requests from ALEC members for policy statements, model legislation and educational activities shall be directed by the Executive Director to the appropriate Task Force, or the Board of Directors if the issue does not fall within the jurisdiction of any Task Force. The appropriate Public and Private Sector Task Force Co-Chairs determine the agenda for each Task Force meeting, and the meetings will be called and conducted in accordance with these Operating Procedures.

The Director of Policy with the consent of the Executive Director assigns a model bill or resolution to the most appropriate Task Force based on Task Force content and prior jurisdictional history 35 days before a Task Force Meeting. All Task Force Co-Chairs will be provided an email or fax summary of all model bills and resolutions 35 days before the Task Force meeting

If both the Co-Chairs of a Task Force are in agreement that they should have jurisdiction on model legislation or a resolution, the legislation or resolution will be considered by the Task Force. If the other Task Force Co-Chairs believe they should have jurisdiction or if the author of the model bill or resolution does not agree on the jurisdictional assignment of the bill, they will have 10 days after the 35-day mailer deadline to submit in writing or by electronic appeal to the Director of Policy their intent to challenge the jurisdiction assignment. The Director of Policy will notify the Executive Director who will in turn notify the National Chair and the Private Enterprise Board Chair. The National Chair and the Private Enterprise Board Chair will in turn refer the matter in question to the Board of Directors Task Force Board Committee. The Director of Policy will establish a conference call for the Task Force Board Committee co- chairs, the author, the affected Task Force Co-Chairs and the Director of Policy at a time convenient for all participants.

The Task Force Board Committee Co-Chairs shall listen to the jurisdictional dispute by phone or in person within 10 days of the request. If both Task Force Board Committee Co-Chairs are in agreement that the Director of Policy made an incorrect jurisdictional referral, only then will the model bill or resolution be reassigned to a committee as they specify once agreed upon by the National Chair and the Private Enterprise Board Chair. The bill or model resolution is still eligible to be heard in whatever Task Force it is deemed to be assigned to as if submitted to the correct Task Force for the 35-day mailer. The National Chair and the Private Enterprise Board Chair decision is final on this model bill or resolution.

Joint referral of model legislation and/or resolutions are allowed if all the affected Task Force Co-Chairs agree. All model legislation and resolutions that have been referred to, more than one Task Force must pass the identical language in both Task Forces within two consecutive Task Force meetings. It is at the Task Force

Co-Chairs discretion how they will handle the hearings of the model legislation or resolution. Both sets of co-chairs have the ability to call a working group, subcommittee, or simply meet consecutively or concurrently if necessary.

If the Task Force co-chairs both agree to waive jurisdiction, they may do so as long as another Task Force still has jurisdiction.

The National Chair and the Private Sector Board Chair will rely upon the Task Force Board Committee Co-Chairs for advice and recommendations on model legislation or resolutions when no jurisdiction in any of the existing Task Forces in operation can be found. The Task Force Board Committee Co-Chairs will work with the Executive Director and the Director of Policy to identify public and private sector Task Force members (not alternates) from the existing Task Forces should their expertise be of assistance to the Task Force Board Committee in reaching a determination and recommendation for approval by the National Chair and the Private Enterprise Board Chair.

- B. The National Chair and the Private Sector Board Chair will rely upon the Task Force Board Committee Co-Chairs for advice and recommendations on model legislation or resolutions when no jurisdiction in any of the existing Task Forces in operation can be found. The Task Force Board Committee Co-Chairs will work with the Executive Director and the Director of Policy to identify public and private sector Task Force members (not alternates) from the existing Task Forces should their expertise be of assistance to the Task Force Board Committee in reaching a determination and recommendation for approval by the National Chair and the Private Enterprise Board Chair.
- C. The Board of Directors shall have ultimate authority over Task Force procedures and actions including the authority to create, to merge or to disband Task Forces and to review Task Force actions in accordance with these Operating Procedures. Nothing in these Operating Procedures prohibits the Board of Directors from developing ALEC policy; however, such a practice should be utilized only in exceptional circumstances. Before the policy is adopted by the Board of Directors, it should be sent to the Public and Private Sector Task Force Co-Chairs under whose jurisdiction the matter falls for review and comment back to the Board of Directors.
- D. The operating cycle of a Task Force is two years. A new operating cycle begins on January 1 of each odd numbered year and ends on December 31 of the following even numbered year. Task Force activities shall be planned and budgeted on an annual basis within each two-year operating cycle.
- E. ~~At the ALEC Annual Meeting, each Task Force will be responsible for determining an operating budget for the succeeding calendar year. The Executive Director will notify the Task Force Co-Chairs, at the ALEC Annual Meeting, what inflation factor will be used by the Task Force to determine the operating~~

~~and programming budgets. Task Force membership and budget information will be reported to the Executive Director by the Public and Private Sector Task Force Co-Chairs. The Executive Director will present this information to the Board of Directors at its regular fall meeting.~~

- F. If a Task Force is unable to develop an operating budget, the Board of Directors will determine whether to continue the operations of the Task Force. This determination will be made according to: (1) the level of membership on the Task Force, and (2) the need for continued services developed by the Task Force for ALEC.
- G. The Board of Directors shall have the authority to allocate limited general support funds to finance the annual operating budget of Task Forces that meet the requirements prescribed in Section III (E). The Executive Director shall determine, and report to the Board of Directors, the amount of general support funds available to underwrite such Task Forces.

#### ***IV. MEMBERSHIP AND MEMBER RESPONSIBILITIES***

- A. The membership of a Task Force consists of legislators who are members in good standing of ALEC and are duly appointed to the Task Force, in accordance with Section VI (A) and private sector organizations that are full members of ALEC, contribute to the assessment for the Task Force operating budget, and are duly appointed to the Task Force, in accordance with Section VI (B). Private sector organizations that were full members of ALEC and contributed the assessment for the Task Force's operating budget in the previous year, can be appointed to the Task Force for the current year, conditional upon renewal of full ALEC membership and receipt of the current year's assessment for the Task Force operating budget prior to March 31<sup>st</sup>, unless an alternative date has been approved by the Executive Director.
- B. Each Task Force shall have least two Co-Chairs; a Public Sector Task Force Co-Chair and a Private Sector Task Force Co-Chair. The Public Sector Task Force Co-Chair must be a member of the Task Force and appointed in accordance with Section VI (A). The Private Sector Co-Chair must represent a private sector member of the Task Force and be appointed in accordance with Section VI(B). The Co-Chairs shall be responsible for:
  - (1) calling the Task Force and the Executive Committee meetings to order, setting the agenda and co-chairing such meetings;
  - (2) appointing and removing legislators and private sector members to and from the Task Force Executive Committee and subcommittees;
  - (3) creating subcommittees, and determining each subcommittee's mission, membership limit, voting rules, deadlines, and term of service; and

- (4) selecting Task Force members to provide support for and against Task Force policies during formal Board reviews.
- C. Each Task Force shall have an Executive Committee appointed by the Public and Private Sector Task Force Co-Chairs that is appropriate in number to carry out the work product and strategic plan of ALEC and the Task Force. The Executive Committee shall consist of the Public Sector Task Force Co-chair, the Private Sector Task Force Co-Chair, the subcommittee co-chairs, and the remainder will be an equal number of legislative and private sector Task Force members. The Executive Committee will be responsible for determining the operating budget and proposing plans, programs and budgets for the succeeding year in accordance with (Section V (B); determining if a proposed educational activity conforms to a previously approved model bill, resolution or policy statement in accordance with (Section IX (F); and determining if an emergency situation exists that justifies waiving or reducing appropriate time limits in accordance with (Section VIII (H)).
- D. Each Task Force may have any number of subcommittees, consisting of Task Force members and advisors to focus on specific areas and issues and make policy recommendations to the Task Force. The Task Force Co-chairs, shall create subcommittees and determine each subcommittee's mission, membership limit, voting rules, deadlines, and term of service. Any model bill, resolution or policy statement approved by a subcommittee must be approved by the Task Force before it can be considered official ALEC policy.
- E. Each Task Force may have advisors, appointed in accordance with Section VI (G). Advisors shall assist the members and staff of the Task Force. They shall be identified as advisors on official Task Force rosters, included in all official Task Force mailings and invited to all Task Force meetings. Advisors may also have their expenses paid at Task Force meetings covered by the Task Force operating budget with the approval of the Task Force Co-Chairs. An advisor cannot be designated as the primary contact of a private sector Task Force member, cannot be designated to represent a private sector Task Force member at a Task Force, Executive Committee, or subcommittee meeting, and cannot offer or vote on any motion at a Task Force, Executive Committee, or subcommittee meeting.

## ***V. Task Force Budgets***

- A. Each Task Force shall develop and operate a yearly budget to fund meetings.
- B. The operating budget shall be used primarily to cover expenses for Task Force meetings, unless specific funds within the budget are authorized for other use by the Task Force. The operating budget shall be assessed equally among the private sector members of the Task Force. The Executive Director, in consultation with the Task Force Co-Chairs shall determine which costs associated with each meeting will be reimbursed from the operating budget. Any funds remaining in a

Task Force's operating budget at the end of a year are transferred to ALEC's general membership account.

- C. The operating budget shall not be used to cover Task Force meeting expenses associated with alternate task force members' participation, unless they are appointed by their State Chair to attend the Spring Task Force Summit with the purpose to serve in place of a Task Force Member who is unable to attend. Task Force meeting expenses of alternate task force members shall be covered by their state's scholarship account.
- D. The programming budget shall be used to cover costs associated with educational activities. Contributions to the programming budget are separate, and in addition to operating budget contributions and annual general support/membership contributions to ALEC. The Executive Director shall determine the contribution required for each educational activity.

## ***VI. PROCESS FOR SELECTING TASK FORCE MEMBERS, CHAIRS, COMMITTEES AND ADVISORS***

- A. Prior to February 1 of each odd-numbered year, the current and immediate past National chairman will jointly select and appoint in writing three legislative members and three alternates to the Task Force who will serve for the current operating cycle, after receiving nominations from ALEC's Public and Private State Chairs, the Executive Director and the ALEC Public and Private Sector members of the Board. At any time during the year, the National Chairman may appoint in writing new legislator members to each Task Force, except that no more than three legislators from each state may serve as members of any Task Force, no legislator may serve on more than one Task Force and the appointment cannot be made earlier than thirty days after the new member has been nominated. In an effort to ensure the nonpartisan nature of each Task Force, it is recommended that no more than two legislators of any one political party from the same state be appointed to serve as members of any Task Force. A preference will be given to those ALEC legislator members who serve on or chair the respective Committee in their state legislature. A preference will be given to legislators who sponsor ALEC Task Force model legislation in the state legislature.
- B. Prior to January 10 of each odd-numbered year, the current and immediate past National Chairman will jointly select and appoint in writing the Task Force Chair who will serve for the current operating cycle, after receiving nominations from the Task Force. Nominations will be requested by the outgoing Task Force Chair and may be placed in rank order prior to transmittal to the Executive Director no later than December 1 of each even-numbered year. No more than five names may be submitted in nomination by the outgoing Task Force chair. The current and immediate past National Chairmen will jointly make the final selection, but

should give strong weight to the recommendations of the outgoing Task Force Chair. In an effort to empower as many ALEC leaders as possible, State Chairs and members of the Board of Directors will not be selected as Task Force Chairs. Task Force Chairs shall serve for one operating cycle term. Where special circumstances warrant, the current and immediate past National Chairmen may reappoint a Task Force Chair to a second operating cycle term.

- C. Prior to February 1 of each odd numbered year, the Public and Private Sector Task Force Co-Chairs will select and appoint in writing the legislative and private sector members of the Task Force Executive Committee, who will serve for the current operating cycle. The Public and Private Sector Task Force Co-Chairs will select and appoint in writing the legislative and private sector members and advisors to any subcommittee.
- D. Prior to February 1 of each year, the Private Enterprise Board Chair and the immediate past Private Enterprise Board Chair will select and appoint in writing the private sector members to the Task Force who will serve for the current year. The appointment letter shall be mailed to the individual designated as the primary contact for the private sector entity. At any time during the year, the Chair of the Private Enterprise Board may appoint in writing new private sector members to each Task Force, but no earlier than thirty days after the new member has qualified for full membership in ALEC and contributed the assessment for the appropriate Task Force's operating budget.
- E. Prior to January 10 of each odd-numbered year, the Chair of the Private Enterprise Board and the immediate past Private Enterprise Board Chair will select and appoint in writing the Task Force Private Sector Co-Chair who will serve for the current operating cycle, after receiving nominations from the Task Force. Nominations will be requested by the outgoing Task Force Private Sector Chair and may be placed in rank order prior to transmittal to the Chair of the Private Enterprise Board. The Chair and the immediate past Chair of the Private Enterprise Board will make the final selection, but should give strong weight to the recommendations of the outgoing Private Sector Task Force Co-Chair. In an effort to empower as many ALEC private sector members as possible, Private Enterprise State Chairs and members of the Private Enterprise Board will not be selected as Private Sector Task Force Co-Chairs. Private Sector Task Force Co-Chairs shall serve for one operating cycle term. Where special circumstances warrant, the current and immediate past Chair of the Private Enterprise Board may reappoint a Task Force Private Sector Chair to a second operating cycle term.
- F. Prior to February 1 of each odd-numbered year, the Task Force Private Sector Co-Chair will select and appoint in writing the private sector members of the Task Force Executive Committee, who will serve for the current operating cycle. The Task Force Private Sector Co-Chair shall select and appoint in writing the private sector members of any subcommittees.

- G. The Public and Private Sector Task Force Co-Chairs, may jointly appoint subject matter experts to serve as advisors to the Task Force. The National Chair and the Private Enterprise Board Chair may also jointly recommend to the Task Force Co-Chairs subject matter experts to serve as advisors to the Task Force.

## ***VII. REMOVAL AND VACANCIES***

- A. The National Chair may remove any Public Sector Task Force Co-Chair from his position and any legislative member from a Task Force with or without cause. Such action will not be taken except upon thirty days written notice to such Chair or member whose removal is proposed. For purposes of this subsection, cause may include failure to attend two consecutive Task Force meetings.
- B. The Public Sector Task Force Co-Chair may remove any legislative member of an Executive Committee or subcommittee from his position with or without cause. Such action shall not be taken except upon thirty days written notice to such member whose removal is proposed. For purposes of this subsection, cause may include failure to attend two consecutive meetings.
- C. The Chairman of the Private Enterprise Board may remove any Private Sector Task Force Co-Chair from his position and any private sector member from a Task Force with cause. Such action shall not be taken except upon thirty days written notice to such Chair or member whose removal is proposed. For purposes of this subsection, cause may include but is not limited to the non-payment of ALEC General Membership dues and the Task Force dues. .
- D. The Private Sector Task Force Co-Chair may remove any private sector member of an Executive Committee or subcommittee from his position with cause. Such action shall not be taken except upon thirty days written notice to such member whose removal is proposed. For purposes of this subsection, cause may include but is not limited to the non-payment of ALEC General Membership dues and the Task Force dues.
- E. The Public and Private Sector Task Force Co-Chairs may remove an advisor from his position with or without cause. Such action shall not be taken except upon thirty days written notice to such advisor whose removal is proposed.
- F. Any member or advisor may resign from his position as Public Sector Task Force Co-Chair, Private Sector Task Force Co-Chair, public or private sector Task Force member, Task Force advisor, Executive Committee member or subcommittee member at any time by writing a letter to that effect to the Public Sector and Private Sector Task Force Co-Chairs. The letter should specify the effective date of the resignation, and if none is specified, the effective date shall be the date on which the letter is received by the Public and Private Task Force Co-Chairs.

- G. All vacancies for Public Sector Task Force Co-Chair, Private Sector Task Force Co-Chair, Executive Committee member and subcommittee member shall be filled in the same manner in which selections are made under Section VI. All vacancies to these positions must be filled within thirty days of the effective date of the vacancy.

### ***VIII. MEETINGS***

- A. Task Force meetings shall only be called by the joint action of the Public and Private Sector Task Force Co-Chairs. Task Force meetings cannot be held any earlier than thirty-five days after being called, unless an emergency situation has been declared pursuant to Section VIII(H), in which case Task Force meetings cannot be held any earlier than ten days after being called. It is recommended that, at least once a year, the Task Forces convene in a common location for a joint Task Force Summit. Executive Committee meetings shall only be called by the joint action of the Public and Private Sector Task Force Co-Chairs and cannot be held any earlier than three days after being called, unless the Executive Committee waives this requirement by unanimous consent.
- B. At least forty-five days prior to a task force meeting any model bill, resolution or policy must be submitted to ALEC staff that will be voted on at the meeting. At least thirty-five days prior to a Task Force meeting, ALEC staff shall distribute copies of any model bill, resolution or policy statement that will be voted on at that meeting. This requirement does not prohibit modification or amendment of a model bill, resolution or policy statement at the meeting. This requirement may be waived if an emergency situation has been declared pursuant to Section VIII(H).
- C. All Task Force meetings are open to registered attendees and invited guests of ALEC meetings and conferences. Only regular Task Force Members may introduce any resolution, policy statement or model bill. Only Task Force members will be allowed to participate in the Task Force meeting discussions and be seated at the table during Task Force meetings, unless otherwise permitted by the Public and Private Sector Task Force Co-Chairs.
- D. ALEC private sector member organizations may only be represented at Task Force and Executive Committee meetings by the individual addressed in the appointment letter sent pursuant to Section VI(D) or a designee of the private sector member. If someone other than the individual addressed in the appointment letter is designated to represent the private sector member, the designation must be submitted in writing to the Public and Private Sector Task Force Co-Chairs before the meeting, and the individual cannot represent any other private sector member at the meeting.

- E. All Task Force and Executive Committee meetings shall be conducted under the guidelines of Roberts Rules of Order, except as otherwise provided in these Operating Procedures. A copy of the Task Force Operating Procedures shall be included in the briefing packages sent to the Task Force members prior to each meeting.
- F. A majority vote of legislative members present and voting and a majority vote of the private sector members present and voting, polled separately, are required to approve any motion offered at a Task Force or Executive Committee meeting. A vote on a motion to reconsider would be only with the sector that made the motion. Members have the right, in a voice vote, to abstain and to vote present by roll-call vote. In all votes a member can change their vote up until the time that the result of the vote is announced. Only duly appointed members or their designee as stated in Section VIII (D) that are present at the meeting may vote on each motion. No proxy, absentee or advance voting is allowed.
- G. The Public Sector Task Force Co-Chair and the Private Sector Task Force Co-Chair, with the concurrence of a majority of the Executive Committee, polled in accordance with Section VIII (F), may schedule a Task Force vote by mail or ~~fax~~ any form of electronic communication on any action pertaining to policy statements, model legislation or educational activity. The deadline for the receipt of votes can be no earlier than thirty-five days after notification of the vote is mailed or ~~faxed~~ notified by any form of electronic communication, unless an emergency situation is declared pursuant to Section VIII (H), in which case the deadline can be no earlier than ten days after notification is mailed or ~~faxed~~ notified by any form of electronic communication. Such votes are exempt from all rules in Section VIII, except: (1) the requirement that copies of model legislation and policy statements be mailed or ~~faxed~~ notified by any form of electronic communication with the notification of the vote and (2) the requirement that a majority of legislative members voting and a majority of the private sector members voting, polled separately, is required to approve any action by a Task Force.
- H. For purposes of Sections VIII(A), (B) and (G), an emergency situation can be declared by:
- (1) Unanimous vote of all members of the Task Force Executive Committee present at an Executive Committee meeting prior to the meeting at which the Task Force votes on the model bill, resolution or policy statement; or
  - (2) At least three-fourth majority vote of the legislative and private sector Task Force members (voting in accordance with Section VIII (F)) present at the meeting at which the members vote on the model bill, resolution or policy statement.

- I. Ten Task Force members shall constitute a quorum for a Task Force meeting. One-half of the legislative and one-half of the private sector members of an Executive Committee shall constitute a quorum for an Executive Committee meeting.

## IX. ***REVIEW AND ADOPTION PROCEDURES***

- A. All Task Force policy statements, model bills or resolutions shall become ALEC policy either: (1) upon adoption by the Task Force and affirmation by the Board of Directors or (2) thirty days after adoption by the Task Force if no member of the Board of Directors requests, within those thirty days, a formal review by the Board of Directors. General information about the adoption of a policy position may be announced upon adoption by the Task Force.
- B. The Executive Director shall notify the Board of Directors of the approval by a Task Force of any policy statement, model bill or resolution within ten days of such approval. Members of the Board of Directors shall have thirty days from the date of Task Force approval to review any new policy statement, model bill or resolution prior to adoption as official ALEC policy. Within those thirty days, any member of the Board of Directors may request that the policy be formally reviewed by the Board of Directors before the policy is adopted as official ALEC policy.
- C. A member of the Board of Directors may request a formal review by the Board of Directors. The request must be in writing and must state the cause for such action and a copy of the letter requesting the review shall be sent by the National Chairman to the appropriate Task Force Chair. The National Chairman shall schedule a formal review by the Board of Directors no later than the next scheduled Board of Directors meeting.
- D. The review process will consist of key members of the Task Force, appointed by the Task Force Chair, providing the support for and opposition to the Task Force position. Position papers may be faxed or otherwise quickly transmitted to the members of the Board of Directors. The following is the review and adoption procedures:
  - Notification of Committee: Staff will notify Task Force Chairs and the entire task force when the Board requests to review one of the Task Forces' model bills or resolutions.
  - Staff Analysis: Will be prepared in a neutral fashion. The analyses will include:
    - History of Task Force action
    - Previous ALEC official action/resolutions
    - Issue before the board
    - Proponents arguments

- Opponents arguments
- Standardized Review Format: To ensure fairness, a set procedure will be used as the format to ensure the model bill/resolution has a fair hearing before the Board.
  - Task Force Chair(s) will be invited to attend the Board Review
  - Task Force Chair(s) will decide who will present in support and in opposition for the model bill/resolution before the Board.
  - Twenty minutes that is equally divided will be given for both sides to present before the Board.
  - It is suggested that the Board not take more than twenty minutes to ask questions of the presenters.
  - Presenters will then be excused and the Board will have a suggested twenty more minutes for discussion and vote.
  - All votes will be recorded for the official record.
- Notification of Committee: The Director of Policy will notify presenters immediately after the vote. If the Board votes to send the model bill/resolution back to the task force, the Board will instruct the Director of Policy or another board member what to communicate.

E. The Board of Directors can:

- (1) Vote to affirm the policy or affirm the policy by taking no action, or
- (2) Vote to disapprove the policy, or
- (3) Vote to return the policy to the Task Force for further consideration providing reasons therefore.

F. Task Forces may only undertake educational activities that are based on a policy statement, model bill or resolution that has been adopted as official ALEC policy, unless the Task Force votes to undertake the educational activity, in which case the educational activity is subjected to the same review process outlined in this Section. It is the responsibility of the Task Force Executive Committee to affirm by three-fourths majority vote conducted in accordance with Section VIII that an educational activity conforms to a policy statement, model bill or resolution.

## **X. EXCEPTIONS TO THE TASK FORCE OPERATING PROCEDURES.**

Exceptions to these Task Force Operating Procedures must be approved by the Board of Directors.